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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Pay Telephone)
Reclassification and Compensation Provisions)
of the Telecommunications Act of 1996)

CC Docket No. 96-128

To: The Commission

**REPLY TO COMMENTS ON, AND OPPOSITIONS TO,
PETITIONS FOR RECONSIDERATION**

PageMart Wireless, Inc. ("PageMart"), by its attorneys, and pursuant to Section 1.429(g) of the Commission's rules,^{1/} hereby submits its reply to the comments on, and oppositions to, the petitions for reconsideration of the Commission's Second Report and Order in the above-captioned proceeding (collectively, the "Responsive Pleadings"), that were filed by PageMart and others.^{2/} The Responsive Pleadings, on a whole, reflect vigorous support for the changes urged by PageMart in its petition for reconsideration ("PageMart Petition"), namely:

(i) institution of a measured, instead of a per-call, rate of compensation; and (ii) adoption of a "calling party pays" mechanism or a mechanism that allows callers to

^{1/} 47 C.F.R. § 1.429(g).

^{2/} Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, FCC 97-371 (rel. October 9, 1997) ("Second Payphone Order").

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pay only for calls to otherwise blocked toll-free numbers. The Responsive Pleadings expressing disagreement with these suggested reforms are simply without merit.

I. The Comments Indicate Wide Support for a Measured Rate.

Many of the Responsive Pleadings, as well as other petitions for reconsideration, express strong support for a measured rate of compensation. For example, petitions for reconsideration filed by Paging Network, Inc. ("PageNet") and Mobile Telecommunication Technologies Corp. ("Mtel") join PageMart in requesting that the Commission establish a measured rate of compensation based on the duration of toll-free calls.^{3/} As PageMart and those parties have amply demonstrated, it offends basic principles of fairness to require paging carriers to pay the same charge as other carriers for toll-free calls from payphones, where paging calls, on an average, last a small fraction of the duration of other toll-free calls.

Similarly, Responsive Pleadings filed by Metrocall, Inc. and AirTouch Paging vigorously endorse the adoption of a compensation rate that reflects the true cost of paging calls.^{4/} Metrocall is correct in pointing out that, while the present low cost of basic paging service reflects the short duration of paging calls, the Commission's per-call compensation scheme does not, and threatens to triple the cost of such service.^{5/} Such large increases may destroy the very cornerstone of the paging industry's success -- i.e., affordable prices -- and may deprive millions of consumers of affordable payphone service. This would amount to a great disservice

^{3/} PageNet Petition at 6-17; Mtel Petition at 6; see also Mtel Opposition at 6-7.

^{4/} Metrocall Comments at 2, 6-7; AirTouch Comments at 3.

^{5/} Metrocall Comments at 6.

to the public interest, and was clearly not an effect intended by Congress when it instructed the FCC to ensure fair compensation for payphone service providers ("PSPs"). Given the inequity of, and the large risks to paging carriers presented by, a per-call compensation scheme, the Commission must implement a measured rate of compensation for payphone calls to reflect the short average duration of paging calls.

The Responsive Pleadings that oppose a measured compensation rate do not establish a reasonable basis for the rejection of such a reform. The opposition of the RBOC/GTE/SNET Payphone Coalition ("RBOC Coalition"), for example, merely claims that petitioners have not produced evidence of the cost difference between paging and other calls.^{6/} To the contrary, however, the petitions for reconsideration urging adoption of a measured rate set forth in detail the basis for the cost difference between paging and other payphone toll-free calls -- such as increased line charges, wear and tear, and opportunity costs.^{7/}

The RBOC Coalitions' assertion that the D.C. Circuit has implicitly endorsed the Commission's per-call scheme is also meritless. While the court accepted the Commission's carrier-pays, market based scheme, the court remanded the case for the Commission to consider the cost differences between different types of payphone calls -- coin and coinless calls.^{8/} PageMart submits that, in keeping with the spirit of the remand, the Commission was required to consider costs differences

^{6/} RBOC Coalition Opposition at 9.

^{7/} See, e.g., PageMart Petition at 4.

^{8/} Illinois Public Telecomm. Assoc. v. FCC, 117 F.3d 555, 563-64 (D.C. Cir. 1997).

based on other distinctions in payphone calls, such as differences due to varying duration of different types of calls. It is simply not reasonable for the Commission to force paging customers to pay the same amount as others for calls that, on an average, are of a much shorter duration, and therefore impose lower costs, than those of others.

Sprint Corporation also opposes implementation of a measured rate, suggesting in its opposition that parties have not been given proper notice because the measured rate issue was not previously raised.^{9/} Contrary to Sprint's assertion, PageNet, in its reply comments filed over four months ago in connection with the D.C. Circuit's remand of the original payphone order urged the adoption of a measured rate of compensation.^{10/} Parties have therefore been given an ample opportunity to address the merits of such an approach, and the Commission should proceed to implement this approach along the lines suggested by PageMart and its supporters.

II. The Commission Should Institute a Calling Party Pays Mechanism.

Many parties have also expressed overwhelming support for the implementation of a calling party pays system by the Commission. Notwithstanding the decision by the Court of Appeals not to overturn the Commission's calling party pays scheme, Source One ("Source One Petition") and the Dispatching Parties ("DP

^{9/} Sprint Opposition at 13-14.

^{10/} PageNet Reply at 12-16.

Petition") joined PageMart in requesting that the Commission replace the existing carrier pays scheme with a caller pays mechanism.^{11/}

PageMart and these parties have established that a carrier pays system will harm the public interest by being burdensome, and by leading to excessive call blocking, to the detriment of callers willing to pay for, and having a strong need to make, payphone calls to blocked numbers. Such a system will also work to the detriment of toll-free subscribers who will be forced to block all calls, including desired, important and urgent ones, in order to avoid having to pay for excessive or fraudulent calls. Several petitioners and commenters have also demonstrated convincingly that the Commission's carrier pays scheme cannot withstand scrutiny in light of the absence of the wide availability of selective call blocking, and the decision by the Common Carrier Bureau to waive the requirement that PSPs provide interexchange carriers ("IXCs") with the coding digits necessary for such blocking.^{12/}

In commenting on the petitions for reconsideration, AirTouch and AT&T also support a calling party pays scheme.^{13/} AT&T correctly concludes that it is only the caller who can impose market discipline on rates charged by PSPs, and therefore the only way to implement a market-based system fairly and efficiently is to require that the caller pay for 800/888-number toll-free calls from pay phones in the

^{11/} Source One Petition at 5-9; DP Petition at 4-7.

^{12/} DP Petition at 4; Mtel Petition at 2-6; Source One Petition at 3-4; Consumer-Business Coalition Petition at 4; Ad Hoc Telecommunications Users Committee Comments ("Ad Hoc Committee Comments") at 4; Metrocall Comments at 8-9.

^{13/} AirTouch Comments at 10-12; AT&T Corp. Opposition ("AT&T Opposition") at 18-20.

same way the caller must pay for "toll-free" local calls. PageMart also agrees fully with AirTouch that, despite the strong concerns expressed by numerous entities that the FCC's carrier pays scheme significantly harms toll-free subscribers and consumers in general, the Commission has failed fully to consider these implications, and that to remedy this problem, the Commission must now perform a more searching analysis with a view towards reducing the impact of its existing of payphone compensation scheme on other parties.^{14/}

Similarly, Metrocall has demonstrated forcefully that the Commission's carrier pays scheme creates multiple problems, such as "unjust and unreasonable" billing delays, the passing through by IXC's of charges to be borne by long-departed customers of paging companies, increased long distance charges, and marked-up compensation rates.^{15/} PageMart supports the conclusion reached by Metrocall that most of these problems would not exist under a caller pays scheme.^{16/} The Commission has not adequately demonstrated why these multiple harms are outweighed by the benefits of a carrier pays system, and must therefore revisit this issue on reconsideration.

Parties expressing discontent with the notion of a caller pays scheme have not credibly demonstrated any problems with such a scheme, or displayed how they or the public in general might be harmed by such a framework. The RBOC Coalition simply points to the Court of Appeals' remand for the proposition that

^{14/} Id. at 11-12.

^{15/} Metrocall Comments at 11-12.

^{16/} See id. at 12.

arguments in favor of calling party pays are "dead in the water" because they were not accepted by the Court.^{17/} While the Court refused to invalidate the FCC's carrier pays system, that decision did not eviscerate the Commission's continuing obligation to examine, in light of any evidence presented by interested parties, whether such a scheme is indeed consistent with the public interest.

Without a more rigorous evaluation of the respective benefits of the two available methods of compensation, the Commission's duty in this context cannot be discharged. Because numerous petitioners and commenters have set forth a convincing, effectively unchallenged case for the implementation of a caller pays system, the Commission should proceed to implement that clearly superior framework.

III. The Commission Should, In the Alternative, Adopt a Modified Carrier Pays Framework to Allow the Caller to Pay for Calls to Otherwise Blocked Numbers.

In its petition for reconsideration, PageMart urged the Commission to implement (to the extent the Commission does not adopt a caller pays mechanism) a framework that would allow payphone callers to pay for toll-free calls that would otherwise be blocked. This "practical alternative to the all or nothing, pay or block approach"^{18/} has been touted by many other entities as a way to avoid some of the deleterious effects of the Commission's one-sided carrier pays scheme.^{19/}

^{17/} RBOC Coalition Opposition at 8.

^{18/} Ad Hoc Committee Comments at 5-10.

^{19/} Id.; Dispatching Parties Comments at 5. PageMart concedes that the method urged by the Dispatching Parties and supported by the Ad Hoc Committee -- notifying the caller that a number is blocked and allowing the caller to pay for
(continued...)

Such a middle-of-the-road compromise would indeed strike a workable balance between the interests expressed by carriers, the Commission and PSPs, by allocating the cost of almost every toll-free payphone call to the true beneficiary of that call -- the individual or entity willing to pay for it. In some instances, that beneficiary will be the toll-free subscriber, who will decide not to block payphone calls because of their importance to that subscriber. In other instances, the primary beneficiary will be the caller, who will pay for the call in the face of the unwillingness of the toll-free subscriber to do so. Moreover, supporters of such a modified carrier pays mechanism have demonstrated convincingly that it would be far superior to the existing all-or-nothing framework, by deterring fraud, benefitting the public interest, and advancing the Commission's purported market-based compensation system.^{20/}

No party has presented any credible problems with the modified carrier pays scheme endorsed by several petitioners and commenters. Perhaps the only party expressing doubts regarding such a framework, the RBOC Coalition, merely asserts that the Commission need not consider the suggested alternatives, and that a variety of

^{19/}(...continued)

the call -- may, to the extent it is feasible, be more advantageous than the method forwarded by PageMart in its Petition for Reconsideration -- adoption of new 8XX codes for callers willing to pay for calls to blocked numbers. See PageMart Petition at 8-9; Dispatching Parties Comments at 5; Ad Hoc Committee Comments at 5 & n.12. To the extent, however, that the notification approach is infeasible or difficult to implement, PageMart urges the Commission to adopt the 8XX code method. Given the recent release of additional toll free codes (877), the risk of exhaustion of number resources is not great. Moreover, contrary to the suggestion of the Ad Hoc Committee, such a system is unlikely to cause confusion or complicate billing. See Ad Hoc Committee Comments at 5 n.12.

^{20/} Ad Hoc Committee Comments at 5-10; Dispatching Parties Comments at 5.

solutions will arise in the new payphone marketplace without the FCC's intervention.^{21/} It is clear, however, that the Commission cannot simply ignore the problems that have been so overwhelmingly demonstrated by paging companies and other entities alike, and the solution suggested by those parties for remedying the problem. The Commission has a duty to address the strong concerns that have been expressed with respect to its chosen approach, and its intervention is necessary to ensure the proper implementation of the modified carrier pays solution. It is incumbent upon the Commission to implement such a solution to the quandary that it has inadvertently created.

CONCLUSION

For the foregoing reasons, and to the extent indicated above, the Commission should grant the petitions for reconsideration filed by PageMart and other carriers, and deny those filed by the PSPs. In reconsidering the Second Payphone Order, the Commission should implement a measured rate of compensation to reflect the short duration of paging calls, and adopt a carrier pays or modified

^{21/} RBOC Coalition Opposition at 8 n.6.

caller pays scheme, as urged by numerous petitioners and commenters in this proceeding.

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Certificate of Service

I hereby certify that a copy of the foregoing Reply to Comments On, and Oppositions to, Petitions For Reconsideration was served by U.S. first-class mail, postage prepaid, on this 20th day of January, 1998, to the parties listed below:

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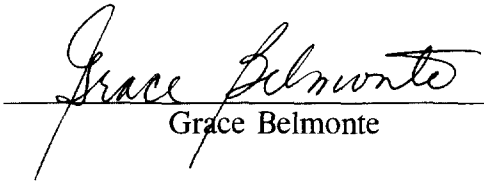
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